INDUSTRIAL & COMMERCIAL REALTY CO. LTD. v. MERCHANT CREDIT PTE. LTD.

[O.C.J. (Choor Singh J.) August 30, 1979]

[Singapore — Civil Suit No. 1413 of 1976]

Company Law — Shares — Purchase of — Whether shareholder had right to a refund.

Equity — Estoppel by conduct.

The defendant company in this case was formed pursuant to a shareholders' agreement dated March 28, 1972 and made between *ICB*, *ALI* and *DFHS*. The initial share capital of $300,000 was issued. After incorporation, the defendant company participated in several business ventures. In late 1972 and early 1973 the directors of the defendant company, comprising of one Hwang (nominee of *ICB*), Crafter (nominee of *ALI*) and *DFHS* decided to invest in an ice skating project in Kuala Lumpur. It was agreed that land and equipment for the project should be purchased in Kuala Lumpur amounting to about $970,000. Pursuant to this further shares were subscribed in the following proportions: *ALI* — 332,500 shares, *ICB* — 332,500 shares and *DFHS* — 35,500 shares. *ALI* paid for its share and *ICB* caused the plaintiff company, its subsidiary, to pay for its share, with the consent of the directors.

The share application money was paid into the defendant company's bank account, as agreed by the parties. Work on the Kuala Lumpur project was started in 1973 but in December 1974, the project was abandoned.

On March 31, 1976 by an ordinary resolution passed at the Extraordinary General Meeting of the defendant company, 332,500 shares of $1 each were allotted to the plaintiffs.

The present action was brought to claim a refund of $332,500 which the plaintiffs had paid to the defendants for the purchase of the said shares.

Held, dismissing the plaintiffs' claim: (1) no company can ever accept share capital from a shareholder on the basis that if its project fails, the capital subscribed by the shareholder will be refunded. In this case therefore the plaintiffs had no right to demand from the defendants refund of the share capital which they had willingly subscribed;

(2) the share certificate was not issued to the plaintiffs within a reasonable time due to the express wish of the plaintiffs;

(3) the plaintiffs by virtue of their conduct were estopped from demanding the refund of $332,500 which they paid towards the purchase of the said shares.

CIVIL SUIT.

T.Q. Lim for the plaintiffs.

Lim Chor Pee (*Mrs. Helen Yeo Cheng Hoon* with him) for the defendants.

Cur. Adv. Vult.

Choor Singh J.: In this action the plaintiffs claimed from the defendants the refund of a sum of $332,500 which the plaintiffs had paid to the defendants for the purchase of shares in the defendant company. It was alleged that the said shares were not issued within a reasonable time; that the application for the said shares had lapsed and that the plaintiffs were therefore entitled to a refund of the said purchase money.

The facts are not in dispute and they are these. Merchant Credit Private Limited the defendant company (hereinafter referred to as *MCPL*) was formed pursuant to a Shareholders Agreement dated March 28, 1972 (AB1) made between:

1. Industrial & Commercial Bank Ltd. (hereinafter referred to as *ICB*).
2. Arthur Lipper International Ltd. (hereinafter referred to as *ALI*).
3. D.F.H. Sinclair (hereinafter referred to as *DFHS*).

The Shareholders Agreement provided by Clause 2(A) that:

"all share capital shall be allocated in such manner that the parties will at all times hold the same in the following proportion:—

ICB - - -	47.5%
ALI - - -	47.5%
DFHS - - -	5%

and the parties hereto undertake with each other that as and when required they shall subscribe for the capital of the Company in the proportions aforesaid."

The initial share capital of $300,000 was issued in accordance with the proportion agreed to in the Shareholders Agreement.

After incorporation, *MCPL* participated in several business ventures.

In late 1972 and early 1973 *MCPL's* directors comprising Y.K. Hwang (nominee of *ICB*), W.H. Crafter (nominee of *ALI*) and *DFHS* decided to invest in an ice skating project in Kuala Lumpur. It was agreed that land and equipment should be purchased in Kuala Lumpur amounting to about $970,000.

In order to raise the necessary funds to pay towards purchase price of the said land and equipment the shareholders decided that each of the shareholders will subscribe further shares in the defendants in the following proportions: —

(i) *ALI*	332,500 shares
(ii) *ICB*	332,500 shares
(iii) D.F.H. Sinclair	35,500 shares

thus increasing the paid-up capital from $300,000 to $1 million.

It was further agreed that the capital so contributed would be credited to a Share Application Account in the defendants' accounting records.

ALI paid for its share and *ICB* caused *ICR*, its subsidiary to pay for its share, with the consent of the directors.

After the share application money was paid into *MCPL's* bank account, Y.K. Hwang requested a deferment in the actual issue of shares until the Kuala Lumpur project became "a going concern". The other directors did not object to this request.

Upon receipt of the said share application money, *MCPL* proceeded to make the Kuala Lumpur project investment and spent the capital expenditure in 1973.

For various reasons the Kuala Lumpur ice skating project could not be developed into a "going concern". By December 1974 the project was more or less abandoned.

Towards the end of 1974 *ICB* became disenchanted with the joint venture and wanted to get out of it as fast as possible.

ALI had initially advanced more moneys to *MCPL* than *ICB* to get the money going on its feet. By December 1974 and January 1975, *ALI* was trying to negotiate with *ICB* to take over its interest in *MCPL* by buying its shares and arranging for the return of all

its investment at par. The negotiations were not successful, and nothing came out of them.

At an Extraordinary General Meeting of the defendant company held on March 31, 1976 the shareholders passed an ordinary resolution authorising the directors of the company to allot 332,500 shares of $1 each to the plaintiffs and the said shares were allotted to the plaintiffs on March 31, 1976.

Thereafter, *ICB* through *ICR* demanded the refund of its "share application money" and when it was refused, *ICR* issued their writ in these proceedings.

It was contended on behalf of the plaintiffs, that as the shares had not been allotted to the plaintiffs within a reasonable time, their application for the shares had lapsed and they were entitled to a refund of the share purchase money. I rejected this submission.

The contract to subscribe for the said shares was between *ICB* and the defendant company. *ICB* were under a legal obligation to subscribe for 332,500 shares. They did so in the name of their wholly-owned subsidiary the plaintiff company. The plaintiff company was merely a nominee of the *ICB*. The defendants agreed to accept the plaintiff company as a shareholder as nominee of *ICB* and upon payment by the plaintiff company of $332,500 and the acceptance of that sum by the defendant company there was a binding contract between the plaintiffs and the defendants that the defendants would issue to the plaintiffs 332,500 shares in the defendant company. Since it was the plaintiffs who had through their director Mr. Y.K. Hwang asked for the deferment of the allotment of shares, which was agreed to by the defendants, this constituted a binding variation of the contract. The plaintiffs were bound by that contract and were clearly not entitled to a refund of the amount they paid as subscription for the 332,500 shares.

There was a further submission that the sum of $332,500 was given to the defendants as a loan to be used as capital in the ice skating project in Kuala Lumpur and that there was an express or implied term that if the project was successful the said loan would be discharged in consideration of the issue of shares to the plaintiffs and if the project was not successful, the loan would be repaid on demand or within a reasonable time. I rejected this submission. It is not supported by the evidence. There was no such agreement between the parties.

The plaintiffs knew very well, through their director Y.K. Hwang, that the share capital of $332,500 which they were subscribing was to be used by the defendant company for the purpose of the Kuala Lumpur ice skating project and that the project may or may not succeed. The defendants' only obligation in accepting the $332,500 was to issue to the plaintiffs 332,500 shares in the defendant company which they have done. The defendants have performed their contract. No company can ever accept share capital from a shareholder on the basis that if its project fails, the capital subscribed by the shareholder will be refunded. A shareholder has no right to demand from his company refund of the share capital which he has willingly subscribed. The share certificate was not issued to the plaintiffs within a reasonable time due to the express wish of the plaintiffs. It is they who did not want the share certificate to be issued forthwith. They expressly asked that the issue of the certificate be deferred until a later date and thereafter they never made a request for the issue of the share certificate.

Finally, the plaintiffs are by virtue of their conduct estopped from demanding the refund of the $332,500 which they paid to the defendants as purchase money for 332,500 shares in the defendant company. The doctrine of estoppel has been explained by Lord Denning in his book, *The Discipline of the Law*, at page 217:

> "Estoppel is not a rule of evidence. It is not a cause of action. It is a principle of justice and of equity. It comes to this: when a man, by his words or conduct, has led another to believe in a particular state of affairs, he will not be allowed to go back on it when it would be unjust or inequitable for him to do so. Dixon J. put it in these words: 'The principle upon which estoppel in pais is founded is that the law should not permit an unjust departure by a party from an assumption of fact which he has caused another party to adopt or accept for the purpose of their legal relations'."

And at page 223:

> "It is a principle of justice and of equity. It comes to this: When a man, by his words or conduct, has led another to believe that he may safely act on the faith of them — and the other does act on them — he will not be allowed to go back on what he has said or done when it would be unjust or inequitable for him to do so."

When the plaintiffs applied for 332,500 shares in the defendant company and sent their cheque for $332,500 to the defendant company, they did so on the request of and as nominee of their parent company I.C.B. As stated earlier, the plaintiffs knew through their director Y.K. Hwang that the $332,500 was required as additional capital and was to be used to finance the purchase of land and equipment for the ice skating project in Kuala Lumpur. There was not only a clear understanding on the part of the plaintiffs that the new capital of $332,500 which they were putting into the defendant company would be expended on the ice skating project in Kuala Lumpur but also by implication an assurance on their part that it could be so used. The defendants acted on that assurance and accepted the money as share capital and expended it on the ice skating project in Kuala Lumpur.

The plaintiffs now wish to go back on that assurance. They wish to withdraw the capital which they injected into the defendant company for financing the ice skating project in Kuala Lumpur. They wish to do so because the Kuala Lumpur project has failed. It would be totally unjust and inequitable to allow them to do so.

It was for these reasons that I dismissed the plaintiffs' claim and granted the defendants a declaration that the plaintiffs are shareholders in the defendant company and hold 332,500 shares therein.

Claim dismissed.

Solicitors: *T.Q. Lim & Co.; Chor Pee & Co.*